IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

Crl.MC.No. 4137 of 2006()

CRIME 54/2003 OF EDAKKAD POLICE STATION

PETITIONER: ACCUSED.

P.RAFEEQUE, S/O.HUSSAIN, AGED 34 YEARS,
PALLIKKAL HOUSE, MUZHAPPILANGADU P.O.

BY ADV. SMT.SADHANA KUMARI ESWARI
SMT.GISA SUSAN THOMAS

RESPONDENTS: COMPLAINANT.

THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A. AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 4137 of 2006

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Dated this the 9th day of January, 2007

O R D E R

The petitioner is the second accused in Crime No.54 of 2003 of Edakkad Police Station, inter alia, under Section 436 r/w. 149 I.P.C. The co-accused have been proceeded against. They have been found not guilty and acquitted. As the petitioner was working abroad for the past several years and he was not available in India, he did not face the trial. The case against him has been split up and is now pending before the Addl. Chief Judicial Magistrate, Tellicherry as L.P.No. 32 of 2005. The petitioner now wants to surrender before the learned Magistrate. He apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

2. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned

Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons.

(R. BASANT)
Judge

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